APPENDIX TO PETITIONERS' BRIEF

Supreme Court of the United States

OCTOBER TERM, 1941

No. 619

WALTER G. QUERY, JOHN P. DERHAM AND JOHN G. RICHARDS, AS MEMBERS OF AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION, PETITIONERS,

versus

UNITED STATES OF AMERICA, MAJOR GENERAL HENRY D. RUSSELL, UNITED STATES ARMY, INDIVIDUALLY AND AS COMMANDING GENERAL, FORT JACKSON, SOUTH CAROLINA, AND MAJOR WILLIAM R. TOMY, UNITED STATES ARMY, INDIVIDUALLY AND AS POST EXCHANGE OFFICER, FORT JACKSON, SOUTH CAROLINA, RESPONDENTS.

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The petition for *certiorari* in the above case having been granted and notice thereof having been served on petitioners only two weeks and two days prior to the hearing, it was impossible to comply with the rules of Court as to time. The record at that time had not been printed and we were at the disadvantage of not having a printed copy of the Transcript of Record before us when preparing the brief.

For the above reasons and for the convenience of the Court, we are printing in this appendix the pertinent portions of the South Carolina Statutes and the Act of Congress involved in this litigation.

Code of Laws of South Carolina, 1932, Vol. II, Page 231. (Act No. 574, Acts of 1928 of the General Assembly, as amended.)

Section 2527. **Business License Tax.**—(1) **Persons, Firms and Corporations Liable.**—Every person, firm or corporation doing business within the State of South Carolina and engaged in the business of selling such articles or commodities as are named in this section, for the privilege of carrying on such business shall be subject to the payment of license tax which shall be measured by and graduated in accordance with the volume of sales of such person, firm or corporation within the State: *Provided,* That every person, firm, corporation, club or association who sells and/or stores and/or receives for the purpose of distribution to any person, firm or corporation, club, association, any shot gun or other shells or cartridges and/or manufactured tobacco products, and/or candy retailing for eighty (80) cents or above, and/or playing cards otherwise taxable under the provisions of sections 2521 to 2554 shall pay the tax at the rates herein provided for the sale of such articles.

* * *

(5) There shall be levied, assessed, collected and paid in respect to the articles containing tobacco enumerated in this section, the following amounts:

(a) **Little Cigars.**—Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, one ($0.01) cent for each ten (10) cigars, or fraction thereof.

(b) **Cherots, Stogies, Etc.**—Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, retailing for three ($0.03) cents each, or less, three ($3.00) dollars per thousand.

(c) **Cigars.**—Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, retailing for over three ($0.03) cents each, ten ($10.00) dollars per thousand.

For the purpose of computing the tax, cheroots, stogies, etc., are hereby classed as cigars.

(d) **Cigarettes.**—Upon all cigarettes made of tobacco or any substitute therefor; upon each package retailing for five ($0.05) cents, or less, one ($0.01) cent; upon each package retailing for more than five ($0.05) cents each, an additional one ($0.01) cent for each five ($0.05) cents, or fractional part thereof of the retail selling price in excess of five ($0.05) cents;

(e) **Snuff and Chewing Tobacco.**—Upon snuff and chewing tobacco, one ($0.01) cent for each three ounces or fractional part thereof;

(f) **Smoking Tobacco.**—Upon all smoking tobacco, including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette; upon each package retailing for five ($0.05) cents or less, one ($0.01) cent; upon each package retailing for more than five ($0.05) cents each an additional one ($0.01) cent for each five cents or fractional part thereof of the retail selling price in excess of five ($0.05) cents;

(g) **Cartridges and Shells.**—Upon all shot gun or other shells, four ($4.00) dollars per thousand rounds;

Upon all cartridges, twenty-three (23) Caliber or greater, four ($4.00) dollars per thousand rounds;

(h) **Candy.**—Upon all candy retailing at fifty (50¢) cents per pound and above, one ($0.01) cent for each ten cents or fraction of the retail price: *Provided:* That individual factory-wrapped packages of candy retailing for ten (10) cents, or less, shall not be taxable.

(i) **Playing Cards.**—Upon all playing cards a tax of five ($0.05) cents on each fifty ($0.50) cents or fractional part thereof of the retail selling price, the stamps in all such cases to be affixed to the individual package. . . .

. . .

Section 2532. **Soft Drink Tax.**—Every person, firm or corporation doing domestic or intrastate business within this State and engaging in the business of selling, manufacturing, purchasing, consigning, using, shipping, or distributing, for the purpose of sale within this State, any of the following articles, or things, viz.; soda water, ginger ale, coca-cola, lime-cola, pepsi-cola, near beer, beer, fruit juices, bottled drinks of every kind whatsoever, and all fountain drinks and other beverages and things commonly designated as "soft drinks", for the privilege of carrying on such business shall be subject to the payment of a license tax, which tax shall be measured by and graduated in accordance with the sales of such person, firm or corporation within the State of South Carolina except as may hereinafter be provided, as follows: • • •

(b) **Bottled Drinks.**—Any and all soft drinks offered for sale in sealed bottles shall, within twenty-four (24) hours of the time of its manufacture, or receipt in this State, be stamped with South Carolina Soft Drinks License Tax Stamps at the rate of one ($0.01) cents for each five ($0.05) cents or fractional part thereof of the retail selling price, by affixing said stamps at said rate to each individual bottle. That in the case of bottled drinks shipped into South Carolina from a point outside of said State, said stamps shall be affixed to said bottled drinks within twenty-four (24) hours after such bottled drinks come into possession of the person first receiving the same, whether said person be a wholesaler, jobber, distributor, and/or retailer of said products.

Bottled Drinks Taxable.—Bottled soft drinks as referred to in sections 2521 to 2554, shall include any and all beverages whether carbonated or not, such as soda water, ginger ale, nugrape, coca-cola, lime-cola, pepsi-cola, budwine, beer, near beer, fruit juice, milk drinks, when any flavoring or syrup in added, cider, cordial, bottled carbonated water and/or any and all bottled preparations commonly referred to as soft drinks of whatsoever kind and description.

• • •

No. 861

AN ACT to Levy a Tax on the Importation, Receipt, or Acquisition of Tobacco Products, Playing Cards, Cartridges and Shells from Without the State for Use or Consumption Within the State and Penalties for Violation of the Terms Thereof.

Section 1. **License tax on cigars, cheroots, stogies, cigarettes, smoking tobacco, snuff, chewing tobacco, playing cards, cartridges and shells imported or acquired without state for use or consumption within state.**—Be it enacted by the General Assembly of South Carolina: Every person, firm, corporation, club or association within the State of South Carolina importing, receiving, or acquiring from without the State, or from any other cource, cigars, cheroots, stogies, cigarettes, smoking tobacco, snuff, chewing tobacco, playing cards, cartridges or shells for use or consumption within the State shall be subject to payment of license tax at the rates provided for the sale and distribution of such articles in Section 2527 of the Code of Laws of South Carolina, 1932, and Acts amendatory thereto.

Section 2. **Pay tax only once on such articles.**—It is the intent and purpose of this Act that the tax hereby levied shall be paid and collected only once on account of any cigars, cheroots, stogies, cigarettes, or shells sold or imported, received or acquired, for use or consumption and shall be paid by the person, firm, corporation, club or association making the first sale or first importing, receiving or acquiring said articles for use or consumption thereof within this State, and payment of said tax shall be evidenced by stamps purchased from the South Carolina Tax Commission and securely affixed to the package in which such articles are sold or from which used or consumed, denoting the amount of tax thereon as levied by this Act.

Section 3. **Administration and enforcement.**—The administrative provisions and the provisions for the assessment of penalties contained in Sections 2521 to 2554, inclusive, Code of Laws of South Carolina, 1932, wherever

applicable are hereby adopted for the administration, enforcement and collection of the taxes provided in this Act.

Section 4. **Additional.**—This Act is hereby declared to be complementary to and not in conflict with the laws providing for the taxation of the sale of the articles herein enumerated.

Section 5. **Rules and regulations.**—The South Carolina Tax Commission is hereby authorized, empowered and directed to promulgate rules and regulations for the enforcement, collection and payment of the taxes herein levied.

Section 6. This Act shall take effect immediately upon its approval by the Governor.

Approved the 30th day of April, 1938.

(PUBLIC—NO. 819—76TH CONGRESS)
(CHAPTER 787—3D SESSION)
(H. R. 6687)

AN ACT to permit the States to extend their sales, use, and income taxes to persons residing or carrying on business, or to transactions occurring, in Federal areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) no person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of Subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940.

Sec. 2. (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

Sec. 3. (a) The provisions of sections 1 and 2 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy.

Sec. 4. The provisions of this Act shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

Sec. 5. Nothing in sections 1 and 2 of this Act shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

Sec. 6. As used in this Act—

(a) The term "person" shall have the meaning assigned to it in section 3797 of the Internal Revenue Code.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 10 of the Federal Highway Act, approved June 16, 1936, are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any territory or possession of United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the interior boundaries of any State shall be deemed to be a Federal area located within such state.

Sec 7. (a) Subsection (a) of section 10 of the Federal Highway Act, approved June 16, 1936, is amended—

(1) By striking out the words "upon sales of gasoline and other motor vehicle fuels" and inserting in lieu thereof the words "upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels"; and

(2) By striking out the words "upon such fuels" and inserting in lieu thereof the words "with respect to such fuels."

(b) Subsection (b) of such section 10 is amended by striking out the words "not sold for the exclusive use of the

United States during" and inserting in lieu thereof the words "with respect to which taxes are payable under subsection (a) for."

Approved, October 9, 1940.

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